IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION Nos. 87 to 96 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

KIRITBHAI PRABHUDAS PATEL

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Appearance:

Mr. A.D.Oza, GOVERNMENT PLEADER for the Petitioners in all matters.

MR AJ PATEL for the Respondents in all matters.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 28/04/2003

ORAL JUDGEMENT

All these Civil Revision Applications are connected with each other and a common question of law

arises for determination and therefore, they are being disposed of by this common judgment.

2. The State Government acquired agricultural land of village Kanjari for the purpose of construction of main canal of river Narmada Irrigation Project. After following due procedure, Special Land Acquisition Officer awarded compensation at the rate of Rs. 1/- per sq.mtr. to the owners of the acquired land. Being aggrieved by the award of the Special Land Acquisition Officer, the claimants-opponents approached the Reference Court by way of filing References. The Reference Court, i.e. Joint District Judge, Panchmahals at Godhra by his judgment and award dated 21st February, 1997 awarded compensation at the rate of Rs. 14/- per sq.mtr. along with additional amount solatium and interest as permissible under the Act. The State Government being aggrieved by the judgment and award of the Reference Court preferred First Appeals before this Court being First Appeal nos. 3360 of 1997 to 3369 of 1997. In the First Appeals, the Division Bench of this Court reduced the amount of compensation to Rs. 11/- per sq.mtr. from Rs.14/- per sq.mtr. confirming the rest of awards and the State Government was directed to deposit necessary amount of compensation together with costs and interest as due to the claimants under the Award within a period of four months from the date of the order. As the State Government has not deposited the amount of award passed by Reference Court the respondents filed Darkhast nos.71 of 1997 to 80 of 1997 in the court of Joint District Judge, Panchmahals at Godhra for directing the petitioners to deposit the amount as per the award passed by the Reference Court. The Joint District Judge, Panchmahals at Godhra vide his order dated 8.12.1999 allowed Darkhast applications and directed the State Government to deposit the remaining amount within two months, failing which distress warrant was ordered to be issued. Being aggrieved by the said order of the Joint District Judge, Panchmahals at Godhra, the petitioner State Government preferred Appeals from Orders in this Court. This court vide its order dated 19th February, held that appeals under Order 43, Rule 1(r) of Civil Procedure Code are not maintainable and hence, at the request made by the Government pleader, granted leave for converting the Appeal from Orders to Revision Application. Hence, these Revision Applications are before this Court for disposal.

3. Thus, these Revision Applications arise out of the order passed by the Joint District Judge, Panchmahals at Godhra on 8th December, 1999 whereby the

State Government-petitioner has been directed to deposit the remaining amount within two months failing which a distress warrant for the recovery of the said amount has been ordered to be issued against the State Government.

4. Heard the learned counsel for both the parties at length. The learned Government Pleader Mr.Oza contended that the Reference Court has not allowed interest on solatium and that has been confirmed by the Division Bench of this Court in First Appeal preferred by the State Government. The relevant operative portion of the said order reads as under:

" The applicants are entitled to get compensation at the rate of Rs. 14/- per sq.mtr. along with solatium at the rate of 30% per annum and additional amount at the rate of 12% per annum from the date of notification under section 4 of the Act till the date of award and interest at the rate of 9% per annum for first year and 15% per annum for remaining period till payment is made and proportionate costs."

The aforesaid awards have been confirmed by the Division Bench of this Court in First Appeals except that the amount of compensation at the rate of Rs. 14/- per per sq. mtr. has been reduced to Rs. 11/- per sq. mtr. As such, according to him, the executing Court has committed an error on the face of the record and has exceeded its jurisdiction in awarding the interest on the amount of solatium which has not been permitted by the Reference court and that interest has been referred only to the amount of compensation as well as additional amount, but not to the amount of solatium. Therefore, the order passed by the executing court is not maintainable in the eye of law.

5. The Division Bench of this Court in para-7 of its judgment has held as under:

"Accordingly, we determine the market value of the acquired lands at Rs.11/- per sq.mtr. The impugned judgment and awards shall stand modified accordingly, while the rest of the awards shall stand confirmed."

On the basis of this, the contention of the learned Government Pleader is that when decree was prepared, a schedule was also prepared. In that schedule, no interest amount on solatium has been prepared by the Reference Court. Hence, the Reference Court has intended that the interest amount on the solatium will not be

calculated at all as that amount has not been mentioned in the schedule while preparing the award. As such, the respondents are not entitled for any amount of interest on solatium. Once the award made by the Reference Court except the amount of market value of the land has been confirmed by this Court in appellate jurisdiction, the executing court has no jurisdiction to reopen and go behind the order passed in the award by the Reference Court. It is also contended that at the relevant time, in the schedule in December 1998, interest was not calculated on the amount of solatium. The Executing Court has prepared the Schedule twice, first at the time when the Reference Court passed the award second time when the awards of Reference Court were confirmed by this Court except the amount of compensation was reduced to Rs.11/- from Rs.14/- per sq.mtr. Both the times the schedules were prepared but no amount of interest on solatium was included therein. Therefore, the amount of interest on solatium was not payable as per the award made in consonance with the order of this Court in First Appeals. As per the schedule made to the awards in consonance with the award passed by this Court in First Appeals, the amount was deposited by the State as per the direction of the Court. The executing court has considered as to whether the respondents are entitled for interest on the solatium which cannot be considered by the executing court. Therefore, the execution order passed by the executing court on the execution petition is not permissible in law. It was not argued before the executing court that inadvertently, that amount of interest on solatium has not been included. But the argument advanced before the executing court was that the State has not deposited the awarded amount in full and less amount has been deposited in the Court by the State authorities. The executing court has erroneously relied on the decision of the Andhra Pradesh High Court in the case of B. Ravinder Reddy vs. Special Deputy Collector, Land Acquisition, Hyderabad reported in AIR 1981, Andhra Pradesh, 381 wherein it is held that Land Acquisition Act (1 of 1894)sections 34, 23(2)- compensation amount comprises not only the market value of the land but also solatium-Interest is payable on compensation as determined under section 23 which includes solatium-Hence interest is payable on solatium also. The executing court has committed an error on the face of the record in coming to the conclusion that the market price includes solatium also. Hence, interest must be calculated on solatium also and the opponents are liable to pay interest on solatium amount also. At the relevant time, there was a decision of the Supreme Court in the case of Union of India vs. Swarnasingh and others reported in

1997, SC, 462 wherein it has been held that the award of the High Court granting enhanced solatium at 30% under section 23(2) and interest at the ate of 9% per annum for one year and from the date of taking possession and thereafter at the rate of 15% per annum till the date of deposit under section 28 as amended under the Act no.68 of 1988 are clearly without jurisdiction and the order is a nullity. On the basis of the Supreme Court law, the amount of interest on solatium has not been rightly awarded by the Reference Court and that has not been included in the schedule of 1997 as well as of 1998. As such, at the relevant time, the order passed by the Reference Court was fully justified in not awarding the interest on solatium amount. In case that amount of interest on solatium has not been awarded by the Reference Court, an application could have been moved before the Reference Court for the amendment of the order itself. But in the present, the respondents have not filed any application before the Reference court for the amendment of the decree (award). Hence, the executing court cannot amend the award passed by the Reference Court. Therefore, the executing court has no jurisdiction to interfere with the awards for grant of interest on solatium amount. According to him, even the trial court or appellate court has no power to amend the decree under section 152 of Civil Procedure Code and that point could have been raised before the reference court for modification of awards and the schedules attached therewith. As such, in the execution petition, a prayer for grant of interest on solatium cannot be decided by the executing court and more particularly the interest amount has not been granted by the reference court on the solatium nor the High Court in appeal. Hence, the interest granted by the executing court on solatium is without jurisdiction. In support of his argument, the learned Government Pleader placed reliance on the decision of the Supreme Court in the case of Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others reported in AIR 1970, SC, 1475 wherein it has been held that decree is binding and the executing court cannot go behind the decree even if it is erroneous in law or on facts.

6. On the other hand, the learned counsel for the respondents submitted that the amount of interest on solatium is part of compensation and interest is payable under the Act and it can be claimed at any stage of the proceedings under the Act. The amount of compensation under section 23(1) is subject to rules and procedure and limitation. In this regard, he relied on the decision of the Supreme Court in the case of Shri

Vijay Cotton and Oil Mills Ltd. vs. State of Gujarat reported in AIR 1991, SC, 656 wherein it is held that the costs and interest if not awarded by the lower court can always be awarded by higher courts in any proceedings under the Act and to any party entitled to the same under the Act. There is inherent evidence in the wording of sections 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the amount awarded with interest at 6% per annum..." The legislative mandate is clear. It is a directive to the Collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest-amount is to be included in the award-decree as prepared under section 28 (1) read with section 26. Similarly section 28 provides "the award of the Court may direct that the Collector shall pay interest." The interest to be paid under section 34 and also under section 28 is of different character than the compensation amount under section 28(1). Thus, according to him, the respondents are entitled for interest on the amount of solatium even if that amount has not been awarded by the reference court. Under the mandate of the statute, the appellants are under an obligation to pay that amount of interest on solatium. Five Judges bench of the Supreme Court in a reference made to it (Is the State liable to pay interest on the amount envisaged under section 23(2) of the Land Acquisition Act, 1894 ?) held in the case of Sunder vs. Union of India, reported in 21(3) GLH, 447 "as we think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court State of Haryana vs. Smt. Kailashwati and others (supra) : " Once it is held as it inevitably must be that the solatium provided for under section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a land owner, then from the plain terms of section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of section 28 in terms warrant and authorise the grant of interest on solatium as well."

7. The learned counsel for the respondents

has also relied on the judgment of this Court dated 11th April, 2002 passed in Revision Application nos. 1115 of 2001 to 1125 of 2001.

8. The crucial point which arises for determination in these Revision Applications is whether the respondents are entitled for interest on solatium amount eventhough the amount of interest on solatium has not been awarded by the Reference Court. After careful consideration and scrutiny of the submissions made by the learned counsel for both the parties and well settled legal position as enumerated above, I am of the opinion that from the decision of the Five Judges Bench of Supreme Court (supra), it is evident that interest is also part of the compensation and interest on solatium is permissible and that is mandatory to be payable to the land owners. The Supreme Court referred to the Larger Bench and that reference has been decided by 5 Judges Bench in the case of Sunder Vs. Union of India, reported in 2001 (1) G.L.H. 446, wherein the following question was referred.

"1 - The question referred to this Bench of five Judges is a simple one. Is the state liable to pay interest on the amount envisaged under Section 23 (2) of the Land Acquisition Act, 1894 (for short 'the Act') The sum contemplated in the aforesaid sub-section can conveniently be called "solatium" as that expression has been used plentifully in almost all land acquisition proceedings in India. The reference of the aforesaid question to this Larger Bench was necessitated on account of a seeming conflict as between the decision of a three Judge Bench of this Court in Union of India V. Shri Ram Mehar and Ors. [ (1) SSC 109] on the one hand and a few later decisions of co-equal benches of this Court on the other hand.

And it has been decided as under :

26 - We think it useful to quote the reasoning advanced by Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High in State of Haryana V. Smt. Kailashwati and Ors, (supra) : "Once it is held as it inevitably must be that the solatium provided for under Section 23 (2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the

market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well."

Therefore, the respondents are entitled to interest on solatium amount. If the respondents are entitled for interest on solatium amount as held by the Supreme Court in the case reported in AIR 1991, SC, 656, that amount can be claimed at any stage and the State is under an obligation to pay the same to the land owners. Even the Reference Court has not awarded the interest on solatium and the interest on solatium has been allowed by the Reference Court for which under law the respondents are entitled where justice has been done by the Court below, this Court declines to exercise its discretionary power to interfere with the orders of the Court below. In these circumstances, I hold that the Revision Applications filed by the State are devoid of any merits and they deserve to be dismissed. Accordingly, the same are hereby dismissed. Rule discharged in each of the Revision Applications with no order as to costs. Interim relief stands vacated.

9. In the last, on behalf of the learned AGP Mr. Oza, a request is made that this judgment be stayed for some time to approach the higher forum. I have considered this request. However, in the facts and circumstances, I do not find any substance in this request. Accordingly, the same is refused.

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